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8 Attorney for Bent Corydon

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 CHURCH OF SCIENTOLOGY OF)
12 CALIFORNIA,)

13 Plaintiff,)

14 vs.)

15 GERALD ARMSTRONG)

16 Defendant.)
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18 MARY SUE HUBBARD,)

19 Intervenor)
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) CASE NO. C420153

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT
) OF MOTION OF BENT
) CORYDON TO UNSEAL FILE

) DATE: NOVEMBER 9, 1988
) TIME: 9:00 a.m.
) DEPT: 56

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I. INTRODUCTION

1. On August 10, 1984, the Honorable Judge Paul Breckenridge entered judgment in the case of THE CHURCH OF SCIENTOLOGY OF CALIFORNIA v. ARMSTRONG, Los Angeles Superior Court Case No. C 420153 (hereinafter "Armstrong"). It is plaintiffs' understanding, Judge Breckenridge found that the Church of Scientology (hereinafter "Scientology"), used "Fair Game Policy," and that the Church used information obtained through private counseling to harass members who subsequently left Scientology. We have been advised by the court clerk the case is currently under seal.

2. This office represents Bent Corydon whom two Scientologists, Heber Jentsch and John Carmichael, have sued alleging he made libelous statements concerning them, i.e., they lie pursuant to Scientology policy, Judicial Council Coordination Proceeding No. 2151. In another Washington D.C. suit, Scientology claims it has been defamed by allegations it harasses.

3. Scientology, in a separate action, sued to regain a church building from a splintered Scientology group involving Bent Corydon. Corydon claims that the splintering from Scientology was directly caused by the application of Scientology's "Fair Game policy."

4. It is essential to the efficient, and equitable resolution of these cases that defendant be granted access to the opinion and documents currently under seal in Armstrong. Not only may there be relevant information, but the findings of facts may have collateral estoppel effect.

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II. RELIEF FROM THE PROTECTIVE ORDER
SHOULD BE GRANTED IN LIGHT OF THE FACT THAT THE
PRESENT CLAIMS AGAINST DEFENDANT CORYDON
CONCERN DEFAMATION.

5. In an action concerning defamation, the nature of the claim is such that there is strong policy reason for opening documents under seal. As stated in the California Penal Code:

"In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed."

California Penal Code Section 1203.45 (f).

Furthermore, the judgment entered by Judge Breckenridge in Armstrong stated:

"In any other legal proceedings in which defense counsel, Contos and Punch and Michael J. Flynn, is of record, such counsel shall have the right to discuss such exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client." FORD v. SUPERIOR COURT, 233 Cal. Rptr. 607, 608 F.N. 1 (e) (1986).

1 6. Thus, it is clear that Judge Breckenridge intended that
2 such information be available in subsequent litigation concerning
3 the issues involved, and defendant in the present action should
4 not be penalized for his failure to chose the above named
5 attorneys and firms for representation.

6 **III. RELIEF FROM THE PROTECTIVE ORDER**
7 **SHOULD BE GRANTED BECAUSE THE OPINION AND**
8 **DOCUMENTATION UNDER SEAL IN ARMSTRONG IS NECESSARY**
9 **AND RELEVANT TO THE INSTANT ACTION**

10 7. The Armstrong opinion, and documents admitted into
11 evidence therein are necessary and relevant to the instant action
12 as findings made in Armstrong will constitute collateral estoppel
13 with regard to many of the issues and allegations in the present
14 litigation. In Armstrong, Judge Breckenridge made findings to
15 the effect that Scientology used "fair game policy," and used
16 information obtained through private counseling in order to
17 harass members who had left Scientology. Such findings
18 constitute a bar against relitigation of the use by Scientology
19 of such policies and methods. These findings constitute
20 conclusive evidence of proof of the matter stated in defense of
21 the defamation actions brought by the Church of Scientology.

22 8. The Armstrong opinion is also directly relevant to the
23 claims brought by plaintiffs Jentzsch and Carmichael due to the
24 fact that Jentzsch and Carmichael were/are high ranking members
25 of the Church of Scientology, and as such were responsible for
26 the application of "fair game policy." The actions brought by
27 both Jentzsch and Carmichael allege that defendant made false
28 statements that Jentzsch and Carmichael lied pursuant to

1 "policy."

2 9. Plaintiff Jentzsch claims that Defendant Corydon
3 defamed him by stating that Jentzsch lies. One statement made by
4 Jentzsch and used by Defendant Corydon in his formulation of his
5 conclusion that Jentzsch lies concerns a statement made by
6 Jentzsch in a 1987 BBC broadcast wherein Jentzsch stated in
7 essence that the Breckenridge opinion was Nazi influenced. For
8 this reason it is essential that access to the file be granted so
9 that Defendant Corydon will be able to prove the reasonableness
10 of his conclusion that such statement was in fact a lie.

11 IV. RELIEF FROM THE PROTECTIVE ORDER
12 SHOULD BE GRANTED IN ORDER TO PREVENT
13 THE DESTRUCTION OR CONCEALMENT OF ESSENTIAL
14 DOCUMENTATION BY THE CHURCH OF SCIENTOLOGY IN
15 ACCORDANCE WITH SCIENTOLOGY POLICY

16 10. The documentation and opinion in the Armstrong case is
17 essential to the instant action. It has come to our attention
18 through the Declaration of Vicki J. Aznaran (see attached) that
19 it is standard policy of the Church of Scientology to destroy or
20 conceal documents discoverable and unfavorable to the Church of
21 Scientology in ongoing litigation, including Armstrong. Ms.
22 Aznaran further states that Scientology members are punished for
23 failure to comply with such policy, even if failure to comply was
24 inadvertent. For this reason it is highly unlikely that
25 Defendant Corydon in the present action would be able to obtain
26 necessary and essential documents under normal discovery
27 procedures. Therefore, not only would denial of this motion
28 result in unnecessary expense and repeated discovery, but would

1 likely result in denial of effective discovery by the defendant
2 herein as well. Further, to prove the validity of Aznaran's
3 declaration, we must review the discovery order in Armstrong

4 V. RELIEF FROM THE PROTECTIVE ORDER SHOULD BE
5 GRANTED DUE TO STRONG POLICY REASONS CONCERNING
6 PUBLIC DISCLOSURE AND PRIVATE DISCLOSURE FOR LITIGATION.

7 11. As recent as May 27, 1988, the Court of Appeals, First
8 District, was confronted with the policy concerns surrounding the
9 sealing of court documents, and found such orders to be
10 disfavored. In CHAMPION v. SUPERIOR COURT, 247 Cal. Rptr. 624,
11 630 (1988) the court stated:

12 "Applying these principals in the Appellate Court
13 setting, we conclude that a party seeking to lodge
14 or file a document under seal there is a heavy
15 burden of showing the Appellate Court that the
16 interest of the party and confidentiality
17 outweighs the public policy in favor of open court
18 records."

19
20 "The law favors maximum public access to judicial
21 proceedings and court records. Judicial records
22 are historically and presumptuously open to the
23 public and there is an important right of access
24 which should not be closed except for compelling
25 countervailing reasons. [omitted]"

26 12. In the case at bar, Defendant Corydon is moving only
27 for private disclosure of the documents in question. Considering
28 the strong public policy that court documents should be disclosed

1 to the public, it follows that the burden of showing the
2 necessity of continuing to seal documents requested for private
3 disclosure must be considerably greater. The sealing of court
4 documents should only serve to protect the privacy of the
5 individuals involved in the litigation, and should not act as a
6 shield to avoid justice, much less as a sword to be used for the
7 perpetration of injustice. If plaintiffs are so successful in
8 denying defendant access to the documents this motion is intended
9 to release, they will in effect be using the protective order to
10 deny defendant Corydon direct evidence in support of his defense
11 of multiple Scientology actions.

12 VI. CONCLUSION

13 13. The opinion of Judge Breckenridge in the Armstrong
14 case, and the documents admitted into evidence therein, are
15 essential to Defendant Corydon's cases, and will likely act as
16 collateral estoppel plus it will be relevant to issues of
17 document destruction. The consideration of the strong public
18 policy of court documents open to the public, the limited
19 dissemination concerned in the present motion, as well as the
20 high probability that if access to the protected documents is
21 denied such information will be unattainable by Defendant Corydon
22 due to Scientology policy of discovery abuse, Defendant Corydon
23 respectfully requests this Court to grant access to the sealed
24 records in THE CHURCH OF SCIENTOLOGY OF CALIFORNIA v. GERALD
25 ARMSTRONG and any related actions.

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27 Dated: _____

Paul Morantz,
A PROFESSIONAL CORPORATION
Attorney for Defendant Corydon